



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/618,804	07/14/2003	Ashley Kelsey	1389-3	5796

7590 03/15/2005

Raymond E. Farrell, Esq.  
Carter, DeLuca, Farrell & Schmidt, LLP  
Suite 225  
445 Broad Hollow Road  
Melville, NY 11747

EXAMINER

KRAMER, DEAN J

ART UNIT	PAPER NUMBER
----------	--------------

3652

DATE MAILED: 03/15/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/618,804

Applicant(s)

KELSEY, ASHLEY

Examiner

Dean J. Kramer

Art Unit

3652

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-10 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-10 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |   |  |
|---|--|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. ____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)            |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>11/17/03</u> . | 6) <input type="checkbox"/> Other: ____  |

## DETAILED ACTION

### ***Claim Rejections - 35 USC § 112***

1. Claims 6-8 and 10 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

There is no clear antecedent basis for "said first support element" (claim 6) or "The apparatus" (claim 10). Also, claims 7 and 8 are confusing in that it is unclear as to the difference, if any, between the "enclosure member", as recited in claims 7 and 8, and the "container member", as recited in claims 1, 3, and 5 from which claims 7 and 8 ultimately depend.

### ***Claim Rejections - 35 USC § 102***

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1-8, as understood, are rejected under 35 U.S.C. 102(b) as being anticipated by De brey et al..

The patent to De brey et al. shows a pair of food handling tongs comprising container members (25,26) configured for gripping a food item and inserting it within a vessel, a pair of handles (14,15), and an aperture (25b,26b) in each container member. The De brey et al. tongs are deemed *capable* of handling certain shaped cookies.

Art Unit: 3652

4. Claims 1-8, as understood, are rejected under 35 U.S.C. 102(b) as being anticipated by Dunn et al..

The Dunn et al. patent shows a food grasping tool comprising first (15) and second (19) apertured container members capable of containing a cookie therebetween and capable of inserting this cookie within a certain sized vessel.

5. Claims 1-5, 9, and 10, as understood, are rejected under 35 U.S.C. 102(b) as being anticipated by Hunter et al..

The patent to Hunter et al. shows a food handling implement comprising a first apertured container member (40), a handle (45), and a second container member (30). The Hunter et al. implement is disclosed as holding a food item, such as "dough balls" (see col. 8, line 24) which can be considered as cookies as broadly as recited in claim 10, and then inserting the held food item within a vessel containing a hot liquid (i.e. oil).

6. Claims 1-5 and 9 are rejected under 35 U.S.C. 102(b) as being anticipated by Andrews.

Andrews shows a doughnut holder comprising first (10) and second (18,19) containment members and a handle (13) wherein doughnuts contained between members (10) and (18,19) are placed into a vessel of boiling grease.

### ***Specification***

7. The disclosure is objected to because of the following informalities:

On page 5, line 5, the reference numerals "26,28" (second occurrence) should be changed to -34,36--.

Appropriate correction is required.


**Conclusion**

8. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Bentson shows a cooking implement for inserting a tortilla into a vessel of frying liquid.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Dean J. Kramer whose telephone number is (703) 308-2181. The examiner can normally be reached on Mon., Tues., Thurs., Fri. (7:00-5:00).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eileen Lillis can be reached on (703) 308-1113. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
Dean J. Kramer  
Primary Examiner  
Art Unit 3652

3/1/05

djk  
3/1/05